

COMMONWEALTH OF MASSACHUSETTS

BARNSTABLE, SS.

SUPERIOR COURT DEPARTMENT
CIVIL ACTION NO. 1872 CV 244

EDWARD M. ZULLO and CHRISTINE
MacGREGOR,

Plaintiffs,

v.

LORETTA M. PRESUTTI, Individually
and as Trustee, ZULLO REALTY TRUST,
and CELESTE ZULLO,

Defendants.

AFFIDAVIT OF
ROMEO R. ADAMS, ESQ.

I, ROMEO R. ADAMS, Esq., hereby affirm and state:

1. I am counsel for Plaintiff Christine MacGregor in this case.
2. Attached hereto as Exhibit A is my file copy of a letter which I transmitted on March 8, 2018, to Attorney Andrew Aloisi as counsel for Loretta M. Presutti, Trustee, Zullo Realty Trust.
3. I did not receive any response to my March 8, 2018 letter from Attorney Aloisi. On or about April 8, 2018, I received a package of documents from Loretta M. Presutti, which did not include the complete accounting requested in my March 8, 2018 letter.

SIGNED UNDER THE PAINS AND PENALTIES OF PERJURY THIS 7TH DAY OF
JUNE, 2018.

Romeo R. Adams
ROMEO R. ADAMS, Esq.

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EXHIBIT A
EXHIBIT B
EXHIBIT C

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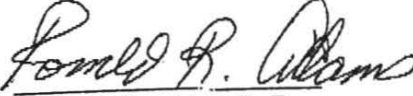
Defendants.

AFFIDAVIT OF
ROMEO R. ADAMS, ESQ.

I, ROMEO R. ADAMS, Esq., hereby affirm and state:

1. I am counsel for Plaintiff Christine MacGregor in this case.
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JUNE, 2018.


ROMEO R. ADAMS, Esq.

ROMEO R. ADAMS, ESQ. MS, FACHE
ADAMS LAW ASSOCIATES, LLC.
ATTORNEYS AND COUNSELORS AT LAW.

03/08/2018

SENT BY FACSIMILE

Andrew Aloisi, Esq.
Aloisi & Aloisi, LLC
156 State Street
Boston, MA 02109-2508

Re: Zullo Realty Trust

Dear Attorney Aloisi:

As you know, this law firm represents Ms. Christene MacGregor in connection with her status as beneficiary of the Zullo Realty Trust.

In my prior discussions with you and Anthony Viola, I have expressed an unequivocal intent to represent my client's interest in a sale of the Winona Farm or the implementation of one or more strategies that would be representative of the best interest of the beneficiaries and the fiduciary responsibilities of the Trustee.

The position of my client remains unchanged. However, before this goal can be achieved, the foundation for establishing trust between the parties must be firmly established and maintained. To that end, my client is requesting the following information from the Trustee:

1. A complete accounting for all revenues and expenses for the Zullo Realty Trust from its initial establishment to present.
2. All mortgage agreements involving the Winona Farm and/or the Zullo Realty Trust, prior to and subsequent to the Death of Dr. Zullo.
3. All proposals for the sale of the Winona Farm, including any present viable proposals.
4. All outstanding tax and other liabilities, secured and unsecured against the Zullo Realty Trust and/or Winona Farm.
5. Currently planned meetings or negotiations with National Development Company.
6. Plans or recommendations the Trustee has sharing information for sharing information with my client, including participation or inclusion in negotiations for the sale or use of the Winona Farm Trust Property and Assets.

5 COMMONWEALTH ROAD, SUITE 3A, NATICK, MA 01760-1526
P.O. BOX 927, WESTBOROUGH, MA 01581
OFFICE: (508) 948-0441. FAX: 1-(888) 628-7911.

**ROMEO R. ADAMS, ESQ. MS, FACHE
ADAMS LAW ASSOCIATES, LLC.
ATTORNEYS AND COUNSELORS AT LAW.**

It is my understanding that the lack of information sharing by the Trustee has been, and continues to be, a major issue between the Trustee and my Client. As you know, the Trustee must adhere to all relevant State Laws and Statutes in exercising her fiduciary duties and responsibilities.

I look forward to working with you, and continuing to work with Anthony Viola, to protect and achieve results that are in the best interest of the beneficiaries of the Zullo Realty Trust and to facilitate the duties and responsibilities of the Trustee.

cc: Christene MacGregor,
Jennifer Mac Gregor- Hartley
Anthony M. Viola, Sr. Vice President
Faneuil Investors Group, Limited Partnership

Yours truly,

Romeo R. Adams, Esq.

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COMMONWEALTH OF MASSACHUSETTS

BARNSTABLE, SS.

SUPERIOR COURT
C.A. NO. 1872CV000244

EDWARD M. ZULLO and
CHRISTINE MacGREGOR

Plaintiffs

v.

LORETTA M. PRESUTTI, Individually
and as Trustee, ZULLO REALTY TRUST,
and CELESTE ZULLO

Defendant

**MEMORANDUM IN OPPOSITION TO
PLAINTIFFS' MOTION FOR PRELIMINARY INJUNCTION**

In support of this Opposition, the Defendants assert that the Plaintiffs have not made a sufficient offer of proof to meet the requirements for injunctive relief.

Introduction

In November of 2014, Edward A. Zullo, father of the parties in this action, and then of 89 Union Street, Natick, Massachusetts, executed a Declaration of Trust known as the Zullo Realty Trust. The Declaration of Trust was recorded at the Middlesex South Registry of Deeds on November 14, 2014. A copy of the same is attached to the Complaint as Exhibit A. The Declaration of Trust identifies Loretta Presutti as the sole nominee Trustee. On September 12, 2016, Edward A. Zullo, father of the parties in this action, passed away.

On May 1, 2018, the Plaintiffs, Edward M. Zullo and Christine MacGregor, sued their sister, Loretta Presutti claiming (1) failure to provide any accounting, (2) breach of fiduciary

duty, and (3) request for her removal as the Trustee. Loretta Presutti was served by a deputy sheriff on May 30, 2018.

Legal Argument

I. Standard for Preliminary Injunction

The Plaintiffs correctly assert in their argument that the purpose of a preliminary injunction is to preserve the *status quo*. Owen v. School Committee of Boston, 304 F. Supp. 1327 (D.Mass 1969)

In Massachusetts, a Court may grant injunctive relief when a party has sufficiently demonstrated (1) a reasonable likelihood of success on the merits, (2) a risk of irreparable harm to that party if the relief sought is not ordered, and (3) that the balance of the equities is in favor of the moving party. See Packaging Industries Group, Inc. v. Cheney, 380 Mass. 609 (1980). Furthermore, the risk of irreparable harm of the issuance of the relief, balanced with the movant's likelihood of success on the merits, must far outweigh any risk of harm to any of the defendants. In the present case, the Plaintiff cannot meet all requirements needed for the relief requested.

By definition, a preliminary injunction must be granted or denied after an abbreviated presentation of the facts and the law. Id. at 616. In evaluating the claims, "the moving party must show that, without the requested relief, it may suffer a loss of rights that cannot be vindicated should it prevail after a full hearing on the merits". Id. "What matters as to each party is not the raw amount or irreparable harm the party might conceivably suffer, but rather the risk of such harm in light of the party's chance of success on the merits. Only where the balance between the risks cuts in favor of the moving party may a preliminary injunction properly issue." Id. at 617.

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Exhibit C

II. Plaintiffs Fail to Seek to Maintain Status Quo

In requesting the preliminary injunction, the Plaintiffs are asking this Court to order that the Trust do three things: (1) promptly list for sale the farm with a licensed broker; (2) require that no offer be accepted unless approved by the plaintiffs; and (3) that the Trust make no payments from the proceeds of any sale of the farm unless approved by the Plaintiffs. However, not one of these three requests goes to preserving the *status quo* of the Declaration of Trust. It is just the opposite. The Plaintiffs are asking this Court to create and order new conditions that were never contemplated by the Declaration of Trust, and in fact go squarely against Edward A. Zullo intended purpose and deliberate wishes in creating the Declaration of Trust. For this reason alone, the Plaintiff's motion must fail as a matter of law.

III. No Risk of Irreparable Harm

In the event that this Court entertains the Plaintiffs' motion, despite the fact that they do not seek to maintain the status quo, it still must be denied because the Plaintiffs have failed to make a proper showing that they are entitled to the relief requested.

As this Court knows, a moving party is required to show that without the requested relief he or she will suffer a loss of rights that cannot be vindicated should he or she prevail after a full hearing on the merits. Id. In the present case, the Plaintiffs have failed to demonstrate sufficient evidence of a risk of irreparable harm to them to warrant the injunctive relief requested. The affidavits that allegedly support the Plaintiffs' motion are completely devoid of any facts that give rise to a substantial risk of irreparable harm. Moreover, the Plaintiffs' motion fails to assert that "money damages would not adequately redress any harm the plaintiffs might suffer prior to a final judgment should they prevail on the merits" regarding their claims. See Id. at 621. The

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Exhibit A
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Exhibit C
Exhibit D
Exhibit E
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Exhibit F

Plaintiffs have offered no evidence that the Trust would be unable to pay any damages that they may be awarded.

Further, by the Plaintiffs' own admissions set forth in their moving papers, the Plaintiffs have known of the existing circumstances *for years* before taking any action. In fact, they did not even seek injunctive relief with this Court at the time of the filing of the Complaint on May 8, 2018. The Defendant Trustee was served nearly a month later, on May 30, 2018. On June 12, 2018, well before a responsive pleading was due to be filed, The Trustee's counsel contacted Plaintiffs' counsel to advise that he believed the venue for the filing to be improper and requested that the Plaintiffs voluntarily transfer the action to Middlesex Superior Court. *See* E-mail of June 12, 2018, attached hereto. The Plaintiffs did not respond to the request and instead served their motion for injunctive relief on June 14, 2018.

In sum, where the moving party fails to demonstrate that the denial of injunctive relief will create substantial risk of suffering irreparable harm, the request for injunctive relief must be denied, no matter how likely it may be that the moving party will prevail on the merits. *Id.* at 621, citing *Sampson v. Murray*, 415 U.S. 61, 88 (1974).

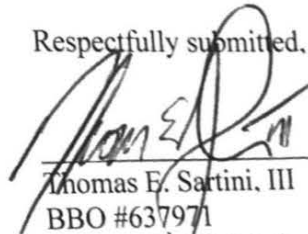
IV. *The Balance Weighs in Favor of Not Granting the Requested Injunction*

Since before the inception of this action, the Trustee has ramped up her efforts to sell the farm. She hired a real estate attorney to assist her in navigating through multiple unsolicited offers from various developers, she has interviewed multiple licensed brokers, and she is in the process of retaining a CPA to assist in reconciling the farms' books, for the benefit of all of the beneficiaries. *See* Affidavit of Loretta M. Presutti in support of this opposition. At this point in time, there is no evidence to suggest that injunctive relief is warranted. Moreover, there is no public interest to be served by the requested injunction.

Conclusion

Based on the foregoing, the Plaintiffs have not made a sufficient showing entitling them to an order for a Preliminary Injunction and their motion should be summarily denied.

Respectfully submitted,


Thomas E. Sartini, III
BBO #637971

SARTINI LAW, PC
179 Great Road, Suite 212
Acton, MA 01720
(978) 621-0340
attorneysartini@verizon.net

Date: June 27, 2018

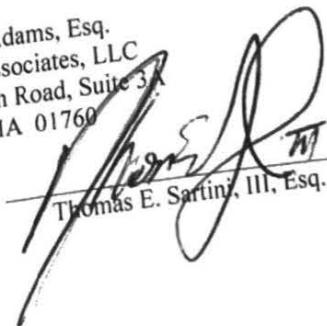
CERTIFICATE OF SERVICE

I, Thomas E. Sartini, III, hereby certify that I have, on this 27th day of June, 2018, served a copy of the foregoing document via first class mail upon the following:

Michael J. Markoff, Esq.
P.O. Box 212
Falmouth, MA 02540

Carmel A. Gilberti, Esq.
GILBERTI LAW, PC
900 Route 134
South Dennis, MA 02601

Romeo R. Adams, Esq.
Adams Law associates, LLC
5 Commonwealth Road, Suite 3
Natick, MA 01760


Thomas E. Sartini, III, Esq.

Thomas E. Sartini, III, Esq.

Thomas E. Sartini, III, Esq. <AttorneySartini@verizon.net>
Tuesday, June 12, 2018 4:42 PM
mjmarkoff@gmail.com
cgilberti@gilbertlawpc.com; romeoadams1@gmail.com
Zullo Realty Trust

From:
Sent:
To:
Cc:
Subject:

Mike,

Thanks for taking my call earlier today. As I understand it, at this point your clients want three things: (1) a broker to retained by the Trust to sell the property; (2) for all offers to be disclosed to the beneficiaries of which the more attractive ones to be voted on; and (3) for the proceeds of any sale after taxes, liens, etc. are paid to be held in escrow pending accounting. Please advise if my understanding is incorrect.

After speaking with you, I did speak with Loretta and have passed the sentiment on to her. She and I plan to speak again tomorrow. I would suggest one adjustment: that the only half the sale proceeds be escrowed and the other half be divided evenly among the four beneficiaries. That way each beneficiary has cash immediately while the remainder is determined.

As for the complaint, I don't have any issue with jurisdiction as the Superior Court has concurrent jurisdiction with the Probate and Family Court for these types of cases. However, I believe the venue to be incorrect. Pursuant to Ch. 203E, Article 2, sec. 204, venue is determined by the "place of administration", which in this case is Natick, MA, putting the case into Middlesex Superior Court. Therefore, before any further filings are made for any party, I request that the case be transferred to Middlesex Superior Court. In the alternative, perhaps our clients would collectively consider putting the dispute before the newly created Fiduciary Litigation Session of the Probate and Family Court, which I believe is being run through Norfolk Probate Court in Canton.

Thomas E. Sartini, III, Esq.
Sartini Law, PC
P.O. Box 702
Acton, MA 01720-0702
978-621-0340
attorneysartini@verizon.net

Please visit my webpage at www.sartinilaw.com. Thank you.

The information transmitted herein is intended only for the person or entity to whom it is addressed and may contain confidential and/or privileged material or communication. Any review, transmission, dissemination or other use of, or taking any action in reliance upon this information by any person or entity other than the intended recipient is strictly prohibited. If you received this message in error, then please contact the sender advising of the same and then delete the message and any attachments thereto from any device that received it.

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LORETTA M. PRESUTTI

**IN SUPPORT OF MEMORANDUM IN OPPOSITION TO
PLAINTIFFS' MOTION FOR PRELIMINARY INJUNCTION**

Upon oath, I, Loretta M. Presutti, Individually and as Trustee of Zullo Realty Trust, depose and say as follows:

1. I am a natural person, age 69, residing with my husband, David, of almost 36 years at 236 North Main Street, Natick, MA.
2. I am also the sole Trustee of Zullo Realty Trust, a nominee trust, and have been since 2016 after my father, Edward, died.
3. I have personal knowledge of the facts contained herein and if called as a witness could competently testify thereto.
4. In 2011, I was appointed executrix, health care proxy, and caregiver of my father, Edward A. Zullo. I was also made the property manager of Winona Farm.

COMMONWEALTH OF MASSACHUSETTS

SUPERIOR COURT
C.A. NO. 1872CV000244

BARNSTABLE, SS.

EDWARD M. ZULLO and
CHRISTINE MacGREGOR

Plaintiffs

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and CELESTE ZULLO

Defendant

**AFFIDAVIT OF LORETTA M. PRESUTTI
IN SUPPORT OF MEMORANDUM IN OPPOSITION TO
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Exhibit A

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Exhibit C

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Exhibit G

Exhibit H

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In 2011, my father paid off a \$350,000 mortgage on the farm and paid another \$125,000 for major property improvements and operating expenses.

In late 2011 and again in 2012, the farm suffered extensive hurricane damage.

In 2012, I was granted the power of attorney for my father.

In late 2012 and early 2013, I applied for a new \$350,000 loan from Winchester Savings Bank on behalf of my father in order to maintain the high expenses of the farm.

The farm had been operating at a loss for years.

In May of 2014, my father was hospitalized with severe dehydration due to a gastro-intestinal disorder. He was hospitalized for several days, and I stayed with him for a few days and then had John stay with him. No one else in the family could take the time to stay with him.

Before my father could be discharged home, the house had to be cleaned and sterilized. He had a hospital bed placed in the living room and required around the clock care.

In June of 2014, my father was hospitalized due to an infected gall bladder.

The two hospital stays took their toll on my father's strength.

At that point, his doctors ordered regular visits by physical therapist and visiting nurses.

It took about two months for my father to regain some of his weight and strength.

During this time, I spend an inordinate amount of time taking care of the logistics of my father's care – phone calls, e-mails, and PT and VNA visits.

In November of 2014, my father, Edward A. Zullo, executed a Declaration of Trust known as the Zullo Realty Trust. The Declaration of Trust was recorded at the Middlesex South Registry of Deeds on November 14, 2014 and per my father's wish it identifies me as the sole nominee Trustee.

18. At the same time, my father conveyed the house located at 71 Union Street in Natick to me, and at a later time I conveyed half of my interest to Celeste after my father died.
19. Celeste suffers from systemic Lupus.
20. In 2014-2015, in addition to dealing with my father's health and maintaining the farm, my husband and I sustained a problem with our home heating system in our house that sent toxic fumes throughout our house, making it unlivable until the system was completely replaced. Moreover, we both suffered respiratory problems. We were advised to move out of the house for an extended period and into a clean air environment.
21. We were put up in a single room for six months until the house was professionally cleaned and the air quality levels were acceptable. We were not able to move back home until November of 2015, and even then we did so without much of our personal belongings because they were placed in storage.
22. In 2015, I took a personal loan, a majority of the proceeds of which I advanced to the farm for its ongoing expenses and also for the personal care expenses for my father.
23. The winter of 2015-2016 was one of the worst in New England's history with over one hundred inches of snowfall, multiple blizzards, and ice conditions. The winter conditions caused the farm to incur unanticipated costs regarding frequent snow removal, repairs of frozen pipes, power outages, and driveway damage of which I made all arrangements for the same in an effort to protect and maintain the farm.
24. This was all going on while my father was in poor health and I received only bare minimal assistance from Ed and Christine.

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Exhibit C

I asked Ed and Chris to help me in getting coverage for someone to stay with our father and to help with scheduling for coverage. Neither of them contributed sufficiently to his needs and care.

Our sister, Celeste, was in the hospital recovering from a medical procedure and she did more to assist from her hospital bed than either Ed or Chris did.

In February of 2016, I applied for another loan and personally guaranteed it in order to keep the farm afloat.

In March of 2016, National Development expressed interest in purchasing the farm. That year I had several meetings and corresponded with them to try to work something out with the understanding that nothing would be done while our father was still alive out of respect to him and his love of the farm.

In April of 2016, my husband experienced chest pains and underwent a heart procedure as it was found that he had 50% blockages in two arteries

On September 12, 2016, our father, Edward A. Zullo, passed away.

Celeste and I made all the arrangements for his services, eulogy, video, mounted state police outside the funeral home, etc.

In December of 2016, I met with Ed and Chris to discuss National Development's interest in the property.

In February of 2017, I was appointed the personal representative for my father's estate. I had a very long list of tasks to accomplish for the probate attorney.

In 2017, I maintained an open dialogue with National Development about a sale of the property. Celeste and I wanted to respect and preserve my father's wishes for the property to remain a farm if possible. Ed and Chris just wanted it sold.

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Exhibit C

Exhibit D

Exhibit E

Exhibit

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Exhibit G

Exhibit H

35. In April of 2018, I responded to Ed and Chris's attorneys' requests for documents and financial information regarding Zullo Realty Trust. Thus, the claim that I have never provided any accounting to Ed or Christine is not true
36. Since the Trust's bookkeeper has recently resigned to take a new job, I have since worked diligently to piece together the financials of the Trust for Ed and Chris going back to when my father died in 2016.
37. Despite the foregoing, and with full knowledge of the same, my brother and sister, Plaintiffs, Edward M. Zullo and Christine MacGregor, sued me on May 1, 2018 claiming (1) failure to provide any accounting, (2) breach of fiduciary duty, and (3) request for my removal as the Trustee.
38. The Trust's attorney, Thomas Sartini, has since moved to dismiss the action for various legal reasons.
39. In recent months, I have received a number of unsolicited inquiries about selling the farm and have retained Christine Morgan, a real estate attorney, to assist in negotiating an offer to be able to present to the beneficiaries. Through counsel, I have notified Ed and Christine of potential offers for the farm.
40. On June 27, 2018, I interviewed the following licensed real estate brokers to list the farm:
- a. Demetrius Spaneas - Land and Sea Real Estate Company / Keller Williams;
 - b. Stephanie Burns - Compass Real Estate (Donahue- Maley and Burns Team);
 - c. Anne Sasser – Sotherby's International;
 - d. Ken Barber - William Ravies Real Estate Company;
 - e. Stanley Edwards- Land Vest Residential Division; and
 - f. Robert DeSantis - Realty Development Services.

41. Also on June 27, 2018, on behalf of the Zullo Realty Trust, I met with Robert F. Kilkenny, CPA, P.C. about reconciling the balance sheets and conducting other general accounting needs for the Trust.
42. I have tried my very best to balance respecting my father's wishes for the farm with my obligations as trustee and trying to maintain my relationships with my siblings. To my disappointment, I have done so with only minimal assistance from either Ed or Chris.

Signed under the penalties of perjury this 27 day of June, 2018

Loretta M. Presutti

Loretta M. Presutti